

NOAA FORM 88-14

U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration

Agreement No. CCF-\_\_\_\_\_

## INTERIM CAPITAL CONSTRUCTION FUND AGREEMENT

This Interim Capital Construction Fund Agreement (the "Agreement"), made effective on \_\_\_\_\_, by and between the Secretary of Commerce (the "Secretary") and \_\_\_\_\_ (the "Party"), a citizen of the United States.

WITNESSETH:

WHEREAS:

1. The Party has applied for establishment of an Interim Capital Construction Fund (the "Interim Fund") under section 607 of the Merchant Marine Act, 1936, for the purpose of providing replacement, additional, or reconstructed vessels for operation in the fisheries of the United States;

2. The Secretary after appropriate findings and determinations has authorized the award of an Interim Capital Construction Fund Agreement to the Party upon the terms and conditions set forth in this Agreement and subject to the provisions of the Merchant Marine Act, 1936, as amended from time to time (the "Act"), and to such rules and regulations as the Secretary of Commerce or his delegate shall from time to time prescribe, either alone or jointly with the Secretary of the Treasury, as necessary to carry out the powers, duties, and functions vested in them by the Act (the "Rules and Regulations").

NOW, THEREFORE, in consideration of the premises, it is hereby agreed:

I. Establishment of Interim Fund. An Interim Fund is hereby established for the purposes set forth in Article III. During the term of this Agreement deposits into and withdrawals from the Interim Fund shall be made only in accordance with the provisions, conditions, and requirements of the Act, this Agreement, and the Rules and Regulations.

II. Term of the Agreement. This Agreement shall terminate:

- A. Upon failure of the Party to make application for a permanent Capital Construction Fund Agreement (the "Permanent Agreement") within sixty (60) days after notice in the Federal Register that the final form of such Permanent Agreement and form of application, if any, have been adopted by the Secretary.
- B. Upon denial by the Secretary of a timely-filed application for a Permanent Agreement.
- C. By mutual consent.
- D. Upon failure to execute a Permanent Agreement within ninety (90) days after tender by the Secretary of such Agreement for execution by the Party.
- E. At the option of the Secretary, upon a determination pursuant to subsection (f) (2) of section 607 of the Act that a Party has failed to fulfill a substantial obligation under this Agreement, or if the Party has made any material misrepresentation in connection with this Agreement.
- F. Upon the execution by the Secretary and the Party of a Permanent Agreement.

In the case of terminations occasioned by the events described in sections (A), (B), (C), (D), and (E) above, the provisions of the Internal Revenue Code of 1986 shall apply as though this Agreement had not been executed.

If this Agreement is terminated by virtue of the execution of a Permanent Agreement under (F) above, no interval shall be deemed to occur between the Interim and Permanent Agreement. The assets then on deposit in the Interim Fund, to the extent found necessary and appropriate by the Secretary for carrying out the program set forth in the Permanent Agreement, shall be transferred to the corresponding accounts in the Permanent Fund under the Permanent Agreement.

III. Purposes of the Interim Fund. The Interim Fund established by this Agreement shall be for the purposes of providing for qualified withdrawals during the term of this Agreement (1) to provide for the replacement, addition, or reconstruction of qualified vessels in accordance with the general objectives contained in Schedule B of this Agreement; and/or (2) to provide for the payment of the principal on indebtedness incurred in connection with the acquisition, construction, or reconstruction of a qualified vessel; and (3) to provide for transfer to a Permanent Agreement such amounts as may be approved by the Secretary under Article II of this Agreement. For the purpose of item (2) in the preceding sentence, an eligible vessel may also be a qualified vessel.

IV. Approved Depositories. All assets of the Interim Fund shall be maintained in the following depositories: (Insert the name of the depositories)

#### V. Deposits to be made in the Interim Fund.

A. In order to carry out the purposes of section 607 of the Act as more specifically set forth in Schedule B of this Agreement, for each of the taxable years covered by this Agreement;

1. The Party shall deposit in any order all amounts received from the following:
  - a. Receipts (earnings) from the investment and reinvestment of amounts held in the Interim Fund; and
  - b. Except as shall be specifically exempted from deposit by the Secretary, net proceeds (i) the sale or other disposition (including any mortgage) of any agreement vessel, and (ii) any insurance or indemnity attributable to any agreement vessel resulting from total loss whether such loss was determined by compromise, constructively, or by agreement.
2. In addition to the deposits required by section (A) of this Article V, the party may make deposits in any order and amount but not in excess of the sum of:
  - a. One hundred percent of the taxable income attributable to the operation of the agreement vessels in the fisheries of the United States;
  - b. The amount allowable as a deduction under section 167 of the Internal Revenue Code of 1986 for such year in respect to the agreement vessels; and
  - c. Net proceeds not required to be deposited under section (A) (1) (b) of this Article V from (i) the sale or other disposition (including any mortgage) of any agreement vessel, and (ii) any insurance or indemnity attributable to any agreement vessel.

In no event may the deposits of taxable income from agreement vessels for any taxable year exceed one hundred percent of the taxable income of the Party for such year. Deposits may be made to the ordinary income, capital gain, and capital accounts from any moneys or funds of the Party, however, the Federal income tax treatment of any deposit shall be that specified under section 607 of the Act.

B. Deposits which are determined by subsequent audit to exceed the limitations stated in section (A) of this Article V may be applied as deposits applicable to a subsequent taxable year either under this agreement or an immediately succeeding Permanent Agreement. In the event that upon subsequent audit it is determined that amounts deposited in the Interim Fund for any taxable year fall below the maximum limitations stated in section (A) of this Article V, additional deposits may be made applicable to such taxable year.

C. Deposits may be made in the form of mortgages and evidences of indebtedness received in connection with transactions referred to in section (A) of this Article V.

D. With respect to any leased vessel covered by this Agreement, the maximum amount which may be deposited by the Party for any taxable year may be increased by the amount allowable to the owner as a deduction under section 167 of the Internal Revenue Code of 1986 that the owner does not deposit under an Agreement for that year. Such deposits by the Party shall be added to the amount in the capital account as a deposit of depreciation.

#### VI. Withdrawals from the Interim Fund.

A. Prior to making a withdrawal, or a related series of withdrawals, the Party must obtain the consent of the Secretary, and, if required by the Secretary, must amend and supplement Schedule B. A withdrawal made for the purposes specified in Schedule B of the Agreement, as so amended and supplemented, shall be treated as a "qualified withdrawal" within the meaning of subsection 607(f) of the Act except as otherwise provided in section (B) of this Article VI. Any withdrawal which is not a qualified withdrawal shall be treated as a nonqualified withdrawal or a withdrawal pursuant to subsection 607(h), as the case may be.

B. The Secretary may from time to time determine that the addition of a significant degree of fishing effort to the existing fleet in any specific segment or segments of the fisheries will be inconsistent with the wise use of the fisheries resource involved, and inconsistent with the development, advancement, management, conservation, or protection of that resource (the "Closed Fishery"). Prior to his making a final determination the Secretary shall give notice of his intention to make such determination and afford an opportunity for hearing by publishing a proposed regulation in the Federal Register establishing that qualified withdrawals may not be made from the Interim Fund if such withdrawals would introduce a significant degree of additional fishing effort into the Closed Fishery. If, after notice and opportunity for hearing, the Secretary makes a determination and gives notice thereof by promulgating a regulation in the Federal Register, the Party affected thereby may:

1. Make a qualified withdrawal in accordance with section (A) of this Article VI: Provided, that a degree of fishing effort substantially equivalent to any additional degree of fishing effort to be introduced into any Closed Fishery as a result of such qualified withdrawal is permanently removed by such Party from all fishing effort in that Closed Fishery; or
2. Amend Schedule B with the Secretary's consent; or
3. Make a nonqualified withdrawal in accordance with section (A) of this Article VI in such manner as the Secretary determines to be equitable to the Party by allowing the Party to withdraw all of the assets in the Interim Fund, or specified portions thereof, over a period of time; or
4. Continue the Interim Fund, and all or a portion of the assets in it: Provided that it appears to the Secretary that a qualified withdrawal may at some later time be reasonably expected to occur.

In the case of nonqualified withdrawal in accordance with this Article VI, the provisions of the Internal Revenue Code of 1986 shall apply as though this Agreement had not been executed with respect to the funds withdrawn.

VII. Investment of the Interim Fund. Investments shall be made in accordance with the following requirements and such additional requirements as the Secretary may by Rules and Regulations prescribe from time to time.

A. The assets of the Interim Fund may be invested in obligations of the United States Government or of any agency or instrumentality thereof, bankers acceptances and negotiable certificates of deposit which are readily marketable and which are issued by members of the Federal Deposit Insurance Corporation and the Federal Reserve System, and commercial paper which is readily marketable and of one of the two highest grades as rated by Standard and Poor's Corporation. All of the foregoing investments shall mature not later than one year from the date of their purchase.

B. No person shall buy on margin or effect the short sale of any security when acting for the account of the Interim Fund.

C. Assets of the Interim Fund may not be invested in securities of any of the following:

1. The Party;
2. A subsidiary of the Party;
3. A related company of the Party; or
4. Any issuer under common control with the Party, or owning or controlling more than ten percent of the Party's voting securities.

VIII. Pledges and Assignments Prohibited. The Party covenants and agrees that, without the prior written consent of the Secretary, neither the Party nor a trustee nor any other person shall pledge or assign all or any portion of this Agreement, the Interim Fund, or any assets in the Interim Fund.

IX. Related Companies. Where affiliates, subsidiaries, holding companies, or other persons related to the Party, directly or indirectly, are involved in the financing, acquisition, construction, or reconstruction of a qualified vessel, the Party shall make written application to the Secretary for approval of the transaction not less than thirty (30) days prior to the execution thereof. Withdrawals with respect to such transactions before such approval is granted shall be treated as nonqualified withdrawals unless otherwise approved by the Secretary.

X. Records and Reports.

A. The Party and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the Party (1) shall keep its books, records, and accounts relating to the property and to the maintenance, operation, and servicing of the vessel(s) and service(s) covered by this Agreement in such form and under such conditions as may be prescribed by the Secretary, but the Secretary shall not require the duplication of books, records, and accounts required to be kept in some other form by the Secretary of the Treasury so long as such information is made available to the Secretary, and (2) shall file, upon notice from the Secretary, balance facts and transactions, as in the opinion of the Secretary reveal the financial results in the performance of, or transactions or operations under, this Agreement. The Secretary reserves the right to require that all or any of such statements, reports, and memoranda shall be certified by independent certified public accountants acceptable to the Secretary. The Party shall from time to time establish and maintain such checks upon or systems of control of expenditures or revenues in connection with the operation of the agreement vessel(s) as the Secretary may require.

B. The Secretary is hereby authorized to examine and audit the books, records, and accounts of all persons referred to in section (A) of this Article X whenever he may deem it necessary or desirable.

XI. Warranties and Representations by the Party. The Party hereby warrants, represents, and agrees as follows:

A. That the Party is, and at all times during the period of this Agreement, will continue to be a citizen of the United States within the meaning of subsection 905(c) of the Act;

B. That the Party owns or leases the eligible vessels, as that term is defined in subsection 607(k) of the Act, set out in Schedule A of this Agreement;

C. That the vessels referred to in Schedule B of this Agreement:

1. Were, or will be, constructed or reconstructed in the United States;
2. Were, or will be, documented under the laws of the United States for operation in the fisheries of the United States; and
3. Are, or will be, operated in the fisheries of the United States and the areas of operation specified in Schedule B.

D. That the Party will during the term of this Agreement comply with the provisions of this Agreement, of the Act, and of the Rules and Regulations.

XII. Effective Dates. This Agreement is binding upon execution and shall be effective for purposes of withdrawals from the Interim Fund in accordance with Rules and Regulations issued by the Secretary and for purposes of deposits the effective date(s) shall be prescribed in joint Rules and Regulations issued by the Secretary and the Secretary of the Treasury.

XIII. Modification, Amendment, and Extension. This Agreement may be modified, amended, or extended by mutual consent.

XIV. Miscellaneous Provisions.

A. The use of headnotes at the beginning of the Articles in this Agreement is for the purpose of description only and shall not be construed as limiting or in any other manner affecting the substance of the Articles themselves.

B. The "Secretary" shall mean the Secretary of Commerce or any official or body from time to time duly authorized to perform the duties and functions of the Secretary of Commerce under the Act (including the Administrator, National Oceanic and Atmospheric Administration, or his authorized delegate).

IN WITNESS WHEREOF, the Secretary and the Party have executed this Agreement in duplicate, effective as of the date hereinbefore first mentioned.

UNITED STATES OF AMERICA  
SECRETARY OF COMMERCE  
National Oceanic and Atmospheric Administrator

By \_\_\_\_\_  
Financial Assistance Specialist  
Financial Services Division  
National Marine Fisheries Service

(SEAL)

ATTEST: (By corporate secretary), or  
Witness: (others)

PARTY:

By \_\_\_\_\_

By: \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_